17.3.05

SINGLE BENCH

(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 2025 /2005

PETITIONER : Rajesh Tiwari, S/o Premshankar Tiwari, aged 32 years, R/o Nagdaone Colony, Talapara, Bilaspur (C.G.)

-VERSUS-

RESPONDENTS :

1. Superintendent of Police, Bilaspur, District Bilaspur (C.G.)

2. Station House Officer, Police Station, Civil Lines Police Station, Bilaspur, District Bilaspur (C.G.)

3. Ramprasad Yadav, S/o Rampher Yadav, aged 46 years, R/o Nagdaone Colony, Talapara, Bilaspur (C.G.)

P.R. No. 1976/05
Presented by Shri H.S. Thakur
dated 22/05/05

WRIT UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT, ORDERS OR DIRECTION.

(13)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2025 of 2005

Rajesh Tiwari

- Versus -

Superintendent of Police, Bilaspur & ors

POST FOR ORDER ON 15th JUNE, 2005

Sd/-
L.C. Bhadoo
Judge

(19)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.2025 of 2005

Rajesh Tiwari

- Versus -

Superintendent of Police, Bilaspur & ors

Present: -

Mr. Rajeev Shrivastava, Advocate : For the petitioner

Mr. Sunil Otwani, Panel Lawyer : For respondent No.1 & 2.

Before Hon'ble Mr. L.C. Bhadoo, J.

O R D E R

(Passed on 15th June, 2005)

1. The petitioner has preferred this writ petition under Article 226 & 227 of the Constitution of India praying for issuance of writ of mandamus directing respondent No.1-Superintendent of Police, Bilaspur for registering the offence punishable under Sections 380 & 453 of the Indian Penal Code against respondent No.3.

2. Brief facts leading to filing of this petition, as mentioned in the petition, are that the petitioner is running a grocery shop since 1992 in the premises situated at Nakdaune Colony, Talapara, Bilaspur owned by respondent No.3. The petitioner was tenant in the said premises at the monthly rent of Rs.600/-. However, respondent No.3 asked the petitioner to vacate the premises by 31.3.2005 but in the morning of 17.3.2005 when the petitioner went to open his shop he was shocked to see that the lock which was put by him on 16.3.2005 was found broken and the doors were locked by another lock of respondent No.3. The petitioner

requested respondent No.3 to open the lock but he refused to do so. The goods of the petitioner valuing Rs.80-90,000/- and furniture valuing about Rs.20,000/- is inside the shop. The action of respondent No.3 falls within the purview of robbery and house trespass, therefore, he had committed an offence punishable under Sections 380 & 453 of the Indian Penal Code. The petitioner immediately lodged a written report before respondent No.2-Station House Officer, Police Station-Civil Lines, Bilaspur but instead of registering the offence under the aforementioned sections, respondent No.2, showing favour to respondent No.3, registered the offence punishable under Section 448 of Indian Penal Code. Being aggrieved by the action of respondent No.2 the petitioner, as per provision of Section 154(3) of the Cr.P.C., sent a registered report to respondent No.1 but no action has taken by respondent No.1 for directing respondent No.2 to register the offence under Sections 380 & 453 of the IPC.

3. I have heard learned counsel for the petitioner on admission of petition.

4. The petition of the petitioner is wholly misconceived because Section 154(1) of the Cr.P.C. envisages that *"every information relating to the commission of a cognizable offence, if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf"*. It is not the case of the petitioner that respondent No.2 has not registered the information as given by him or he has not

recorded the information verbatim given by the petitioner. In this case sub-section (3) of Section 154 of Cr.P.C. as prayed by the petitioner is not attracted, for the reason that sub-section (3) is attracted only when an officer-in-charge of a Police Station refuse to record the information referred to in sub-section (1). In this case, respondent No.2 has recorded the information verbatim given by the petitioner, the only grievance of the petitioner is that respondent No.2 ought to have registered the offence under Sections 380 & 453 of the IPC. The matter is still under investigation and if the petitioner is not satisfied with the action of respondent No.2 then he is at liberty to file a complaint before the Magistrate concerned and request the Magistrate to forward the same under Section 156 (3) of the Cr.P.C. to the concerned police station or he can file a private complaint and raise his objection that on facts an offence different from what the Station House Officer has registered or filed the challan is made out and on that the Magistrate will be entitled to take cognizance of the offence looking to the allegations & facts of the complaint and investigation papers.

5. Therefore, in my considered opinion the petitioner has not been able to make out a case for issuance of direction to respondent No.2 as prayed by the petitioner. The provisions of Chapter XII of the Code show that detail and elaborate provisions have been made for securing that an investigation takes place regarding an offence of which information has been given and the same is done in accordance with the provision of the Code. The manner and method of conducting the investigation are left entirely to the officer in charge of the police station or a subordinate officer deputed by him. The formation of the opinion whether there is

(22)

sufficient or reasonable ground of suspicion to justify the forwarding of the case to a magistrate or not as contemplated by Sections 169 and 170 is to be that of the officer-in-charge of the police station and this Court is not entitled to issue direction to respondents for registering a case under the particular offence.

6. In the result, for the aforesaid reasons, the petition of petitioners deserves to be dismissed and accordingly, it is dismissed.

Sd/-
L.C. Bhadoo
Judge

Roshan/-